

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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OCT 3 1995

In the Matter of

TeleCable of Piedmont, Inc.,
TeleCable of Spartanburg, Inc. and
TeleCable of Greenville, Inc.;

Complainants,

v.

Duke Power Company,

Respondent

CC DOCKET NO. 95098
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PA 90-0003

PA 91-0002

DOCKET FILE COPY ORIGINAL

TO: The Honorable John M. Frysiak
Administrative Law Judge

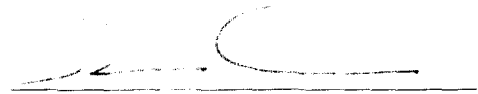
MOTION FOR ENTRY OF STIPULATED ORDER

The parties have entered into the attached Settlement Agreement and jointly request entry of an order accepting settlement as final resolution of all matters in this case.

Respectfully submitted,

TeleCable of Piedmont, Inc.
TeleCable of Spartanburg, Inc.
TeleCable of Greenville, Inc.


By:


Paul Glist
Frederick W. Giroux
COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006

Its Attorneys

Duke Power Company

By:


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1850 K Street, N.W.
Suite 500
Washington, DC 20005

Its Attorneys

October 2nd, 1995

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	CC DOCKET NO. 95-93
)	
TeleCable of Piedmont, Inc.,)	
TeleCable of Spartanburg, Inc. and)	PA 90-0003
TeleCable of Greenville, Inc.;)	PA 91-0002
)	
Complainants,)	
)	
v.)	
)	
Duke Power Company,)	
)	
Respondent)	
)	

DOCKET FILE COPY ORIGINAL

**TO: The Honorable John M. Frysiak
Administrative Law Judge**

SETTLEMENT AGREEMENT

This settlement agreement is made and entered into as of September 22, 1995, by and between TeleCable of Piedmont, Inc., TeleCable of Spartanburg, Inc. and TeleCable of Greenville, Inc. (collectively, "TeleCable") and Duke Power Company who are parties to the Pole Attachment Complaint now pending before the Federal Communications Commission ("FCC") as CC Docket No. 95-93, PA 90-0003, PA 91-0002.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

1. TeleCable executes this agreement for itself, its successors, assignees and anyone or any entity claiming through it for TeleCable's claims asserted in this case. This agreement does not affect present or future claims by TeleCable, its predecessors, successors, assignees, subsidiaries or affiliates which concern matters other than concerning Duke Power Company pole attachment rates for 1990 through 1995, and related billings for TeleCable's attachments to Duke's poles.

2. Duke Power Company executes this agreement for itself, its successors, assignees, and anyone or any entity claiming through it. This agreement does not affect present or future claims by Duke, its predecessors, successors, assignees, subsidiaries or affiliates which concern matters other than concerning Duke Power Company pole attachment rates for 1990 through 1995, and related billings for TeleCable's attachments to Duke's poles.

3. This agreement does not affect the present or future participation of any of the parties hereto in rulemaking or other similar non-complaint proceedings related to the Act.

4. In full and final settlement of TeleCable's claims concerning Duke Power Company's pole attachment rates at issue in this case, the parties agree as follows:

- a. The per pole rate of \$ 4.23 will be applied from 11/15/90 to 12/31/90; \$ 4.53 for 1991; \$4.62 for 1992; \$ 4.53 for 1993; \$ 5.15 for 1994; and \$ 5.16 for 1995.
- b. Duke will modify its billing and rate setting process as follows: Duke will continue to bill semi-annually in January and July; changes in rates will be announced with at least 60 days notice

prior to July 1 of each year. Changes to the billing for January-June will be due the following January, without interest.

- c. Each of TeleCable's respective Licensing Agreement for Pole Attachments (the "License Agreements") shall be deemed amended without the necessity of (1) signing any further amendments to such agreement or (2) any written notices.
- d. Duke Power Company agrees to refund to TeleCable \$145,591.24 within ten (10) days after an order approving this settlement.

5. Neither TeleCable nor Duke Power Company will file any pole attachment complaint with the FCC, any state or federal court or agency, or any other tribunal, with respect to the pole attachment rates and related billings for TeleCable's attachments to Duke's poles agreed upon above.

6. Telecable has agreed to and does hereby compromise and settle with Duke Power Company, its employees, directors, officers and agents and does hereby release Duke Power company, its employees, directors, officers and agents from any and all claims, demands, actions, or causes of action of whatever nature or character which have been or which may hereafter be asserted by Telecable or any other person or corporation whatsoever claiming by, through or under TeleCable, arising from (a) Duke Power Company's per pole attachment rates, for the period of November 15, 1990 through December 31, 1995; and (b) related billings for TeleCable's attachments to Duke's poles for the period of November 15, 1990 through July 31, 1995.

7. Duke Power Company has agreed to and does hereby compromise and settle with TeleCable, its employees, directors, officers and agents and does hereby release TeleCable, its employees, directors, officers and agents from any and all claims, demands, actions, or causes of action of whatever nature or character which have been or which may hereafter be asserted by Duke Power Company or any other person or corporation whatsoever claiming by, through or under Duke Power Company, arising from (a) Duke Power Company's per pole attachment rates for the period of November 15, 1990 through December 31, 1995; and (b) related billings for TeleCable's attachments to Duke's poles, for the period of November 15, 1990 through July 31, 1995.

8. The parties agree that this agreement is a compromise settlement of disputed claims and that this agreement will not be construed as an admission of liability by either party. This agreement shall not provide third parties with any remedy, claim, liability or other right.

9. This agreement contains the entire agreement between the parties with respect to the matters described herein, and all prior agreements, oral or written presentations, statements, understanding, proposals, and undertakings with respect to such matters are superseded and replaced by the provisions of this agreement. This agreement cannot be modified or terminated except by a written document executed by all parties hereto.

10. This agreement may be executed in counterparts.

IN WITNESS THEREOF, the parties hereby execute this agreement effective
as of the date first written above.

Respectfully submitted,

TeleCable of Piedmont, Inc.
TeleCable of Spartanburg, Inc.
TeleCable of Greenville, Inc.

By: 

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Its Attorneys

September 22, 1995

CERTIFICATE OF SERVICE


I, Heather Roberts, a legal secretary with the law firm of Cole, Raywid & Braverman, L.L.P., do hereby certify that a copy of the foregoing was sent via first-class, postage pre-paid, United States mail, this 31st day of October, 1995, to the following:

Hon. John M. Frysiak*
Administrative Law Judge
Federal Communications Commission
2000 L Street N.W. Room 223
Washington, D.C. 20554

Duke Power Company
P.O. Box 33189
Charlotte, NC 28242
Attn: Rowe Hass

George E. Johnson*
Jon Reel*
Federal Communications Commission
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Heather Roberts

*Via Hand Delivery